

Part II: The Constitution of 1787

After nearly four months of debate, controversy, and compromise, the state delegates at the Philadelphia convention agreed on September 15, 1787 to the final draft of a new Constitution. The document reflected the give and take of the long, heated sessions on the second floor of the Pennsylvania State House. Many provisions, such as those dealing with state representation in the national government, went through numerous stages of revision.

How did the new Constitution deal with controversial issues?

Delegates did not reach consensus on some issues, such as how enslaved people should be classified for purposes of political representation and taxation. To break the deadlock between southern and northern states, the delegates agreed to count each enslaved person as equivalent to three-fifths of a free person. (The formula was borrowed from a proposed amendment to the Articles of Confederation.) Other key questions remained unanswered

as well. In the end, the delegates to the convention presented their draft not so much as a polished document, but with the acknowledgment that after four months of work they were not going to make much more progress.

How was the new government organized?

The delegates created a strong national government with interdependent executive, legislative, and judicial branches. They spelled out the general powers of the national legislature, but they left much room for interpretation. The Constitution asserted the supremacy of the national government while allowing the states to hold onto broad areas of authority. In many instances, the boundary between the jurisdiction of the national government and the states seemed intentionally unclear.

Why did some of the delegates refuse to sign the proposed Constitution?

When the draft Constitution was finally



This 1752 image shows the State House in Philadelphia, Pennsylvania. The State House became known as Independence Hall and was the site of the Constitutional Convention of 1787.

put before the Philadelphia convention, only thirty-nine of the original fifty-five delegates signed it. A few of the delegates had left in protest, while others were drawn away for personal reasons. Rhode Island had not bothered to send a delegation to Philadelphia, while two of the three New York delegates had walked out to protest the establishment of a strong central government. Some of the most vocal participants in the convention, including Elbridge Gerry, Edmund Randolph, and George Mason, refused to sign the document because of their opposition to specific provisions.

Even among the delegates who signed the Constitution, no one was entirely satisfied with the document. Benjamin Franklin, the oldest delegate at the convention, conceded that he did not approve of every section of the Constitution. In spite of this, he told his fellow delegates at the last meeting of the convention that the proposed Constitution they were

carrying with them back to their home states was needed to establish an effective national government.

“I doubt too whether any other Convention we can obtain, may be able to make a better Constitution. For when you assemble a number of men to have the advantage of their joint wisdom, you inevitably assemble with those men, all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an assembly can a perfect production be expected? It therefore astonishes me, Sir, to find this system approaching so near to perfection as it does....”

—Remarks made by Benjamin Franklin,
as recorded by James Madison,
September 17, 1787

Excerpts from the U.S. Constitution

We the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.

Article I

Section 1 All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2.1 The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors [voters] in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

Section 2.3 Representatives and direct taxes shall be apportioned among the several States... according to their respective numbers [populations], which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons [enslaved people]....

Section 3.1 The Senate of the United States shall be composed of two Senators from each State chosen by the Legislature thereof, for six years; and each Senator shall have one vote.

Section 4.1 The times, places, and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof....

Section 7.2 Every bill which shall have passed the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President of the United States; if he approves he shall sign it, but if not he shall return it.... If after such reconsideration two thirds

of that House shall agree to pass the bill, it shall be sent, together with the [President's] objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a law....

Section 8.1 The Congress shall have the power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States...;

Section 8.2 To borrow money on the credit of the United States;

Section 8.3 To regulate commerce with foreign nations, and among the several states, and with the Indian tribes...;

Section 8.5 To coin money, regulate the value thereof...;

Section 8.9 To constitute tribunals [courts] inferior to the Supreme Court;

Section 8.11 To declare war...;

Section 8.18 To make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the government of the United States....

Section 9.1 The migration or importation of such persons [enslaved people] as any of the states now existing shall think proper to admit, shall not be prohibited by Congress prior to the year 1808....

Section 9.4 No capitation [tax on individuals], or other direct tax shall be laid unless in proportion to the census or enumeration....

Section 10.1 No state shall...coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts...;

Article II

Section 1.1 The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years....

Section 1.2 Each state shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress....

Section 1.3 The electors shall meet in their respective states, and vote by ballot for two persons.... The person having the greatest number of votes [if a majority] shall be the President....

Section 2.1 The President shall be the Commander-in-Chief of the Army and Navy of the United States....

Section 2.2 He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur....

Article III

Section 1 The judicial power of the United States, shall be vested in one supreme court, and in such inferior courts as the Congress may...establish.

Section 2.1 The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties...to controversies to which the United

States shall be a party...between a State and Citizens of another State...between Citizens of different States.

Article IV

Section 1 Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state....

Section 2.1 The Citizens of each state shall be entitled to all privileges and immunities of Citizens in the several states....

Section 3.1 New states may be admitted by the Congress into this union....

Section 4 The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion and...against domestic violence.

Article V

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid...as part of this Constitution when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof.

Article VI

1. All debts contracted and engagements entered into, before the adoption of this Constitution, shall be valid against the United States....

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made...under the authority of the United States shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding.

Article VII

The ratification of the conventions of nine states, shall be sufficient for the establishment of this Constitution between the states so ratifying the same.

The Great Debate: Ratifying the Constitution of 1787

Eleven days after the Philadelphia convention ended, Congress recommended that the final draft of the Constitution be submitted to the thirteen states. Although the convention delegates had gone well beyond the scope of their instructions, Congress raised no objections to their proposal.

Congress also approved the controversial procedure suggested by the convention for ratifying the Constitution. According to the Articles of Confederation, the individual state legislatures should have voted on the Constitution. The convention delegates, however, called on each state legislature to assemble a state convention for the purpose of voting on the Constitution. The method for selecting the delegates was to be decided by the states.

Several states reacted quickly, organizing state conventions and approving the draft Constitution with little debate. The Delaware convention unanimously accepted the Constitution on December 6, 1787. A few days later, supporters of the Constitution in Pennsylvania rushed the document through the ratification process before their opponents could present their case. Within a month, New Jersey, Georgia, and Connecticut also approved the Constitution.

What were the issues in the ratification debate?

By early 1788, fierce debates on ratification were already underway in the states of New York, Massachusetts, and Virginia. Four central issues stood out.

- Were the security and prosperity of the United States threatened by the shortcomings of the Articles of Confederation?
- Were the delegates to the Philadelphia convention justified in drafting a new Constitution, rather than following their instructions to revise the Articles of Confederation?
- Did the powers granted to the national government under the proposed Constitution

pose a threat to individual liberty and the rights of the states?

- Should amendments guaranteeing individual rights be added to the Constitution to prevent the abuse of power by the national government?

In theory, the Constitution could have taken effect with the approval of nine of the thirteen states. In fact, rejection of the document by a major state would have forced a new round of negotiations and might very well have sunk attempts to form a stronger national government.

The Philadelphia convention had conducted its deliberations in secret. Nonetheless, the public quickly entered the ratification debate. Many expressed their opinions with conviction, but at the same time, only the voices of elite men were valued by those in power.

Supporters of the Constitution viewed the document as a means for rescuing the country from the shortcomings of the Articles of Confederation. They expected that the Constitution would win the backing of the United States' most prominent citizens. Opponents found much to criticize. They saw in the Constitution a threat to their liberties and an attempt to create a dominant aristocracy in U.S. society.

“These lawyers, and men of learning, and moneyed men, that talk so finely, and gloss over matters so smoothly, to make us poor illiterate people swallow down the pill, expect to get into Congress themselves; they expect to be the managers of the Constitution, and get all the power and all the money into their own hands, and then they will swallow up all of us little folks, like the great Leviathan....”

—Amos Singletary's remarks as recorded by Jonathan Elliot, Convention of Massachusetts, January 25, 1788

The ratification debate hardened the political divisions in U.S. society. The Federalists, who had been behind the drive to draft a new Constitution, now faced a well-defined opposition, the Anti-Federalists.

The Anti-Federalists were in fact supporters of confederation, or even a loose form of federalism. The Federalists were best described as “nationalists,” because they favored a strong national government.

The Federalists and Anti-Federalists engaged in a war of words in U.S. newspapers. Not since the months just before the outbreak of the War of Independence had U.S. politics

become so heated. As the ratification battle raged in early 1788, three distinct positions emerged.

In the coming days, you will have an opportunity to recreate the debate of 1788. Pay special attention to the primary source documents included. Although the English language of past centuries poses a challenge, do your best to extract meaning from the documents. Your efforts will pay off and give you a clearer understanding of the emotions and reasoning expressed during the first years of the United States.

Advanced Study Guide—Part II

1. What were the main differences between the Constitution of 1787 and the Articles of Confederation?
2. Compared to the Articles of Confederation, how did the Constitution of 1787 strengthen the power of the national government? Give specific examples from the excerpts of the Constitution.
3. In your opinion, was the Constitution of 1787 more or less democratic than the Articles of Confederation? Give specific examples from the excerpts of the Constitution.
4. Look up the definition of “coup d’état.” Why might a historian have described the actions of the Philadelphia convention as a “bloodless coup d’état”?
5. What were the main criticisms directed against the proposed Constitution by the Anti-Federalists?